Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Requests of U S West Communications, Inc., for Interconnection Cost Adjustment Mechanisms	)	CC Docket No. 97-90
	)	CCB/CPD 97-12
	)	

REPLY COMMENTS

Sprint Corporation hereby respectfully submits its reply to comments filed regarding the above-captioned ''Petition for Declaratory Ruling and Contingent Petition for Preemption'' filed on February 20, 1997 by Electric Lightwave, Inc., McLeodUSA Telecommunications Services, Inc., and Nextlink Communications, L.L.C. (''Petitioners''). Commenting parties split, as expected, along industry lines: IXCs and CLECs, on the one hand, which argued that U S West's proposed ICAM surcharge is discriminatory, anti-competitive, unnecessary, and unsupported; and ILECs on the other hand, which opposed the petition on the grounds that the Commission lacks jurisdiction over interconnection pricing rules and that ILECs are entitled to recover all of the costs of complying with the Telecommunications Act of 1996. As discussed briefly below, U S West and other ILECs have ample opportunity to recover the reasonably incurred, fully documented costs of providing interconnection, unbundled network elements, and resold local service without use of the fatally flawed ICAM surcharge mechanism. The Commission should therefore grant Petitioners' request for declaratory

ruling and find U S West's proposed ICAM surcharge contrary to the public interest.

I. ILECs MAY RECOVER THEIR JUST AND REASONABLE COSTS OF PROVIDING INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, AND RESOLD LOCAL SERVICES THROUGH THE SECTION 252 RATE ELEMENTS.

Most commenting parties agree that ILECs are entitled to recover the just, reasonable, and properly documented costs of complying with the requirements of the Telecommunications Act of 1996.[1] However, Sections 252(d)(1) and 252(d)(3) and the Commission's implementing regulations provide ILECs with the opportunity to recover their relevant costs without implementation of an ICAM surcharge. If U S West or any other ILEC did not include all of its relevant costs in its Section 252 rates, or if they are dissatisfied with their negotiated or arbitrated agreements, then those ILECs should not be allowed to attempt an end run around those agreements by implementing a unilateral ICAM surcharge.[2]

U S West and other ILECs are mistaken when they assert that forward looking economic rates exclude start up costs. As ALTS pointed out (p. 6, citing the *First Report and*

[1] *See, e.g.*, Sprint, p. 3; Bell Atlantic/Nynex, p. 3; SBC/Pacific, p. 4; U S West, p. 1; GTE, p. 2; AT&T, p. 4; California, p. 4; Worldcom, p. 4; Comptel, p. 4; ASCI, p. 3; ALTS, p. 1.

[2] *See, e.g.*, Sprint, p. 4; MCI, p. 3; Worldcom, p. 4; GST Telecom, p. 7 Comptel, p. 4; ACSI, p. 3; ALTS, p. 1.

Order,[3] paras. 677, 691-692), forward looking pricing principles ''conceptually encompass all costs that would be caused by CLECs,'' including any extraordinary start-up costs incurred by an efficient carrier.[4] Thus, contrary to U S West's assertion (p. 1), the instant petition does not constitute a ''brazen demand'' for the federal government to ''expropriate the private property'' of ILECs. If an ILEC did not include relevant costs in its negotiated section 252 rates, or if the arbitrators reviewing interconnection agreements disallowed a portion of claimed costs, for whatever reason (insufficient justification, insufficient documentation, etc.), the resulting rates do not represent an unconstitutional taking. Rather, they reflect market realities and regulators' best estimates of just and reasonable rates.

II. THE PROPOSED ICAM SURCHARGE IS ANTI-COMPETITIVE AND DISCRIMINATORY.

U S West and GTE (p. 11) assert that the proposed ICAM surcharge is not anti-competitive or discriminatory because this surcharge is a legitimate means of recovering costs from the cost causer. Assuming *arguendo* that the start-up

[3] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996).

[4] However, the following costs are *not* recoverable under section 252: general network upgrades, historical embedded costs (in those jurisdictions adopting a forward looking economic cost standard); and costs associated with enabling ILEC customers to communicate with CLEC customers. See Sprint, p. 5; Comptel, p. 2.

costs claimed by U S West are reasonable, directly attributable to CLEC entry, and not elsewhere recovered (and, as discussed in Section III below, U S West has failed to demonstrate that this is the case), it is clear that imposing billions of dollars in up-front charges upon new entrants (in the form of either non-recurring charges or huge monthly charges) will be a powerful deterrent to market entry and will place CLECs at a significant disadvantage *vis-a-vis* the incumbent LEC. As AT&T correctly states (p. 7), ''one-time cost charges constitute an especially potent entry barrier'' because they are sunk costs which cannot be recovered by an entrant if it decides to exit the market.

GTE states (p. 8) that the Commission has found in access proceedings that non-recurring costs should be recovered from non-recurring charges (NRCs), and that start-up interconnection costs should therefore be recovered through an ICAM-like surcharge. However, for many years, the Commission restricted the LECs' ability to increase their NRCs to cost (but allowing them to recover any under-recovered non-recurring costs from usage sensitive charges).[5] This policy promoted competition by easing the burden on IXCs other than AT&T, which incurred a disproportionate share of non-recurring costs as they deployed new access facilities

[5] *See, e.g., Investigation of Access and Divestiture Related Tariffs,* 97 FCC 2d 1082, 1129 (1984), warning that ''non-recurring installation charges of the magnitude the ECA is contemplating would probably pose significant barriers to entry for small and growing firms.''

in their networks. It was not until competition in the interexchange market was well established that NRCs were allowed to rise to costs.

More recently, as Sprint pointed out (p. 8, citing *the Local Number Portability Order*), the Commission has ruled that a competitively neutral cost recovery mechanism ''should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber,'' and ''should not have a disparate effect on the ability of competing service providers to earn a normal return.'' Under this standard, the proposed ICAM surcharge cannot be considered competitively neutral and therefore should be rejected.

III. U S WEST'S PROPOSED ICAM SURCHARGE SHOULD BE REJECTED BASED ON THE ALMOST TOTAL LACK OF COST JUSTIFICATION.

Section 252(d)(1) of the Act requires that the rates for interconnection and unbundled network elements be cost-based. By this measure, U S West's ICAM proposal should be rejected outright. As numerous parties point out, the alleged costs underlying the ICAM surcharges are so poorly documented that U S West's proposal constitutes little more than a request for a blank check and is an opportunity for U S West to recover its interconnection costs twice - once from Section 252 rate elements, and once from the proposed ICAM surcharge.[6] Because U S West has every incentive to

[6] *See, e.g.*, Sprint, p. 8; AT&T, p. 3; MCI, p. 3; GST Telecom, p. 4; ALTS, p. 4.

inflate its cost estimates -- both because payments based on such inflated costs constitute revenues to U S West and because such payments impose a severe financial burden on its competitors -- thorough examination of any proposed rates for interconnection, unbundled network elements, or local resale is critical. As the California PUC correctly stated (p. 4), any cost recovery mechanism should cover only ''reasonably incurred'' costs based on ''reliable cost data,'' and ILECs have the burden of proving that ''any implementation costs they would seek to recover were in the public interest and consistent with CPUC policy....''

IV. THE COMMISSION HAS THE AUTHORITY TO PREEMPT STATE-APPROVED ICAM SURCHARGES.

While it is true that the Commission's cost recovery rules are currently on appeal before the eight circuit court, the Commission still has the authority under section 253 (''Removal of Barriers to Entry'') to preempt any state action authorizing U S West's ICAM surcharge.[7] As several parties point out, issuance of a declaratory ruling by the Commission finding that the ICAM proposal is anti-competitive, discriminatory, and not cost-based also would avoid multiple legal proceedings, to the benefit of both state PUCs and new entrants.[8]

[7] *See, e.g.*, AT&T, p. 6; Comptel, p. 5.

[8] *See, e.g.*, Worldcom, p. 6; GST Telecom, p. 10; ALTS, p. 2.

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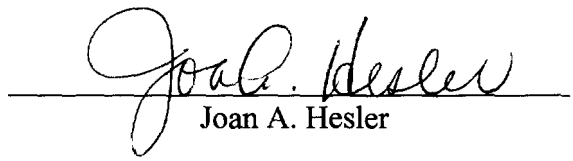
April 28, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 28th day of April, 1997 to the below-listed parties:



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